

No. 13-0070 BN

On January 11, 2013, Claerhout filed a complaint appealing the Board's decision granting her application to renew her license but placing her on probation for five years. The Board filed an answer on February 5, 2013. Claerhout requested an expedited hearing on February 19, 2013, and we granted the motion. On March 19, 2013, we held a hearing on the complaint. David F. Barrett represented Claerhout. Angela S. Marmion represented the Board. The matter became ready for our decision on June 25, 2013, when the last written argument was filed.

At the hearing, Claerhout moved to amend her complaint to add two allegations: that the Board's action in placing her on probation was based on conduct for which sanctions were time-barred under § 324.043;¹ and that its actions violated her due process rights. The Board objected to the latter. At the close of the hearing, Claerhout withdrew her due process allegation. We granted Claerhout's motion to add the statute of limitations allegation to her complaint.

Findings of Fact

1. Claerhout is licensed by the Board as an LPN. She was originally licensed on December 2, 1997. Her license has expired several times, but she has always renewed it, as follows:

Expired:	Renewed:
May 31, 1999	June 5, 2000
May 31, 2002	June 4, 2002
May 31, 2004	July 28, 2004
May 31, 2006	June 20, 2006
May 31, 2008	June 3, 2008
May 31, 2010	December 18, 2012

2. The Board retained copies of all of these renewal applications except the one from 2006. From 2006 to 2009, it was the Board's practice to retain renewal applications only if they contained a change from the previous renewal application.

3. On February 25, 2005, Claerhout pled guilty to the Class D felony of fraudulent use of a credit/debit device, in violation of § 570.130, and to the Class C felony of forgery in

¹ Statutory citations are to the RSMo Supp. 2012 unless otherwise indicated. Neither § 570.130, § 570.090, nor the pertinent portion of § 570.030 has been amended since the dates Claerhout pled guilty to those crimes.

violation of § 570.090, in the Circuit Court of Carroll County. For these crimes, Claerhout received a suspended imposition of sentence and was placed on five years' supervised probation.

4. Claerhout violated her probation several times by associating with another offender. Her probation was revoked, and on February 13, 2007, she was remanded to the custody of the Missouri Department of Corrections to serve a four-year sentence.

5. On October 3, 2008, while in prison, Claerhout pled guilty to the Class D felony of attempted theft/stealing of property or services, more than \$500 but less than \$25,000, in violation of § 570.030, in the Circuit Court of Ray County. She was sentenced to two years' custody in the Department of Corrections.

6. Claerhout was paroled in December 2010. She was discharged from parole on September 3, 2011.

7. Claerhout has a lengthy history of substance abuse, including methamphetamine, marijuana, alcohol, and prescription drugs.

8. Methamphetamine is a controlled substance, § 195.017.4(3)(c), as is marijuana, § 195.017.2(4)(w).

9. Claerhout obtained marijuana and methamphetamine from friends, family members, and dealers. When she was briefly dependent on prescription drugs, she did not obtain them illegally. She did not divert controlled substances from her places of employment.

10. Claerhout has experienced domestic violence and traumatic events that may have contributed to her substance abuse and criminal conduct. For a time she lived with a physically abusive drug dealer. Many members of her family abuse drugs and alcohol.

11. Claerhout received treatment for substance abuse in 2001, 2004, and 2006. Each time she relapsed.

12. Claerhout sought treatment again on December 23, 2011. Upon admission, she reported alcohol abuse and symptoms of dependence on amphetamines. She reported that her last usage of amphetamines was December 1, 2010, but that she had drunk half a gallon of vodka on two separate occasions during the previous thirty days.

13. Claerhout reported to the Board that she has been sober since 2008.

Claerhout's 2010 Renewal Application

14. Claerhout submitted a petition to renew her license on August 12, 2010.² She answered “yes” to the question: “Have you ever been convicted, adjudged guilty by a court, pled guilty or pled nolo contendere to any crime, whether or not sentence was imposed (excluding traffic violations)?” She answered “no” to the question: “Do you currently, or did you within the past five years, use any prescription drug, controlled substance, illegal chemical substance, or alcohol, to the point where your ability to practice as a licensed practical nurse would be affected?”

15. On August 17, 2010, the Board sent Claerhout a letter informing her that the Board had received her petition, but that it could not be processed because she had submitted the incorrect fee, and that it was now mandatory for applicants to undergo a criminal history/background check before they could be approved for renewal.

16. On February 24, 2011, the Board sent Claerhout a letter informing her that the Board had received her criminal history background check and requesting that she provide the Board with certified court records of her criminal history and a notarized statement regarding the circumstances of her criminal background history.

² A nurse whose license has lapsed in Missouri for thirty days or more, but fewer than three years, must petition the State Board of Nursing for renewal of the license on a form furnished by the board. 20 CSR 2200-4.020(11)(C).

17. Claerhout submitted the certified court records on August 1, 2011. She submitted the notarized statement on September 26, 2011. In the notarized statement, she outlined her criminal history and disclosed her history of illegal drug use to the Board for the first time.

18. On October 3, 2011 and again on October 28, 2011, the Board sent Claerhout letters asking that she complete a chemical dependency evaluation.

19. On November 17, 2011, the Board received the chemical dependency evaluation.

20. From early December 2011 through March 2012, the Board received records of Claerhout's treatment from her previous treatment providers.

21. On January 9, 2012, the Board sent Claerhout a letter informing her she needed to supply additional information in order for it to process her renewal.

22. On May 7, 2012, the Board sent Claerhout a letter informing her that she needed to submit a new renewal application because her last one had been received on February 23, 2011 and it was good for only one year from receipt. Therefore, Claerhout had to submit a new application, a new renewal fee (\$32), and a lapse fee (\$50). She also had to submit another fingerprint background check.

23. On August 9, 2012, Claerhout submitted a complete application.

24. The Board issued Claerhout a probated license on December 18, 2012.

Claerhout's Terms of Probation

25. The Board placed Claerhout on probation for five years. It imposed several terms of probation, including that she:

- a) provide a copy of the probation order to current and potential employers;
- b) provide the Board with employer evaluations;
- c) keep the Board apprized of her current employment or unemployment status;
- d) not serve on any administrative staff;

- e) work as a nurse only with on-site supervision;
- f) not work in home health care, hospice, or durable medical equipment;
- g) not work in a healthcare-related position for a temporary employment agency or as a healthcare-related independent contractor;
- h) notify the Board if she receives a prescription for a controlled substance;
- i) submit evidence of regular attendance at Alcoholics Anonymous or similar support group meeting periodically;
- j) provide the Board with updates of treatment evaluations from a chemical dependency basis on a quarterly basis;
- k) not carry narcotics keys or have access to controlled substances for the first 24 months of probation;
- l) abstain from the use or possession of alcohol or controlled substances except as prescribed by a physician; and
- m) contract with a Board-approved contractor to participate, at her own cost, in a random testing program.

26. The combination of these terms and conditions, particularly the condition that she not have access to narcotics, has made it very difficult for Claerhout to find work as a nurse. She has applied unsuccessfully for about thirty jobs.

27. Claerhout is currently unemployed. She struggles to pay the cost of participating in the random testing program.

Rehabilitation

28. Claerhout was discharged from her last treatment program in January 2012. She goes to counseling, participates in a twelve-step program, and is currently working on step 6, in

which she makes amends. She is sober, and she is sincere and motivated in her desire to maintain her sobriety.

Conclusions of Law

We have jurisdiction to hear Claerhout's complaint because she seeks our review of the decision to issue a probationary license. Section 324.038. The Board has the burden to prove the basis for imposing probation. *Id.* We exercise the same authority that has been granted to the Board. *J.C. Nichols Co. v. Director of Revenue*, 796 S.W.2d 16, 20 (Mo. banc 1990). Therefore, we simply decide the application *de novo*. *State Bd. of Regis'n for the Healing Arts v. Trueblood*, 324 S.W.3d 259, 264-67 (Mo. App. W.D., 2012). When an applicant for licensure files a complaint, the agency's answer provides notice of the issues. *Ballew v. Ainsworth*, 670 S.W.2d 94, 103 (Mo. App., E.D. 1984).

I. Statute of Limitations

Claerhout argues that the Board should not consider her 2005 criminal convictions pursuant to § 324.043, which provides:

1. Except as provided in this section, no disciplinary proceeding against any person or entity licensed, registered, or certified to practice a profession within the division of professional registration shall be initiated unless such action is commenced within three years of the date upon which the licensing, registering, or certifying agency received notice of an alleged violation of an applicable statute or regulation.

Claerhout contends that she informed the Board of her 2005 criminal convictions when she renewed her license in 2006. Therefore, she argues, the Board is time-barred from considering those convictions in making its decision to probate her license. The Board no longer has a copy of Claerhout's 2006 renewal application, but denies that she disclosed her criminal convictions at the time of that renewal.

Claerhout's argument is difficult to follow. First, the statute applies to disciplinary proceedings *initiated* by a Board. It is unclear whether the Board's action in granting her a probated license is a "disciplinary proceeding;" it is Claerhout who initiated a case before this Commission. Second, even if we were to accept Claerhout's argument on this point, the evidence is clear that she pled guilty to another crime in October 2008, and did not inform the Board of that conviction or her history of substance abuse until she submitted the materials for her last renewal application during the fall of 2010. Then, the Board issued her a probated license on December 28, 2012 – less than three years after it found out about her last criminal conviction and her history of substance abuse. Thus, there are other timely causes for discipline that the Board could rely on in deciding to issue Claerhout a probated license, even if she disclosed the 2005 criminal convictions when she renewed her license in 2006.

But we do not believe that Claerhout did so. In 2006, the Board did not retain copies of applications *unless* applicants provided new information, such as answering yes to the question about criminal convictions. Claerhout points out that the Board might have mistakenly destroyed her application, but that seems unlikely. The implausibility of her argument, combined with concerns about her credibility, which we discuss further below, lead us to reject her assertion.

The Board's action was not barred by the statute of limitations contained in § 324.043.

II. Due Process

At the hearing, Claerhout withdrew the claim she attempted to add to her complaint that the Board's actions violated her due process rights. Despite this, she claims in her written argument that, pursuant to *Gurley v. Missouri Bd. of Private Investigator Examiners*, 361 S.W.3d 406, 414 (Mo. banc 2012), the Board's actions were inappropriate because it should have first renewed her license and then initiated a disciplinary proceeding. In its response, the Board

argues that we should not consider this issue because the allegation was withdrawn at the hearing. We agree and do not consider it.

III. Cause for Probation

The Board argues that Claerhout is subject to probation pursuant to § 335.066.2, which states:

1. The board may refuse to issue or reinstate any certificate of registration or authority, permit or license required pursuant to chapter 335 for one or any combination of causes stated in subsection 2 of this section . . .

2. The board may cause a complaint to be filed with the administrative hearing commission as provided by chapter 621, RSMo, against any holder of any certificate of registration or authority, permit or license required by section 335.011 to 335.096 or any person who has failed to renew or has surrendered the person's certificate of registration or authority, permit or license for any one or any combination of the following causes:

* * *

(2) The person has been finally adjudicated and found guilty, or entered a plea of guilty or nolo contendere, in a criminal prosecution pursuant to the laws of any state or of the United States, for any offense reasonably related to the qualifications, functions or duties of any profession licensed or regulated pursuant to sections 335.011 to 335.096, for any offense an essential element of which is fraud, dishonesty or an act of violence, or for any offense involving moral turpitude, whether or not sentence is imposed;

* * *

(14) Violation of the drug laws or rules and regulations of this state, any other state or the federal government[.]

As an alternative to refusing to issue a license, the Board may, at its discretion, issue a license subject to probation pursuant to § 324.038.1, which provides:

Whenever a board within or assigned to the division of professional registration, including the division itself when so empowered, may refuse to issue a license for reasons which also

serve as a basis for filing a complaint with the administrative hearing commission seeking disciplinary action against a holder of a license, the board, as an alternative to refusing to issue a license, may, at its discretion, issue to an applicant a license subject to probation.

A. Guilty Plea – Subdivision (2)

Claerhout pled guilty to three crimes: forgery, fraudulent use of a credit/debit device, and attempted stealing. The Board argues that fraud or dishonesty is an essential element of these crimes, and that they are crimes of moral turpitude.

Forgery, as defined in § 570.090.1, requires the “purpose to defraud.” Fraudulent use of a credit/debit card is, by its terms, a crime involving fraud. Stealing is defined in § 570.030 as the appropriation of the “property or services of another with the purpose to deprive him or her thereof, either without his or her consent or by means of deceit or coercion.” Dishonesty is an essential element of such a crime, even if it is only attempted. We agree that fraud and dishonesty are essential elements of the crimes to which Claerhout pled guilty.

They are also crimes of moral turpitude. Moral turpitude is:

an act of baseness, vileness, or depravity in the private and social duties which a man owes to his fellowman or to society in general, contrary to the accepted and customary rule of right and duty between man and man; everything “done contrary to justice, honesty, modesty, and good morals.”

In re Frick, 694 S.W.2d 473, 479 (Mo. banc 1985) (quoting *In re Wallace*, 19 S.W.2d 625 (Mo. banc 1929)).

In *Brehe v. Missouri Dep’t of Elementary and Secondary Education*, 213 S.W.3d 720 (Mo. App., W.D. 2007), a case that involved discipline of a teacher’s certificate under § 168.071 for committing a crime involving moral turpitude, the court referred to three classifications of crimes:

(1) crimes that necessarily involve moral turpitude, such as frauds (Category 1 crimes);

- (2) crimes “so obviously petty that conviction carries no suggestion of moral turpitude,” such as illegal parking (Category 2 crimes); and
- (3) crimes that “may be saturated with moral turpitude,” yet do not involve it necessarily, such as willful failure to pay income tax or refusal to answer questions before a congressional committee (Category 3 crimes).

213 S.W.3d at 725 (*quoting Twentieth Century Fox Film Corp. v. Lardner*, 216 F.2d 844, 852 (9th Cir. 1954)). As the court stated in *Brehe*, crimes involving fraud are necessarily crimes involving moral turpitude. The crimes to which Claerhout pled guilty involved fraud and dishonesty. There is cause to deny her application under § 335.066.2(2).

B. Violation of Drug Laws – Subdivision (14)

In its answer, the Board alleges that Claerhout violated § 195.202 by possessing marijuana and methamphetamine without a prescription for either. Section 195.202 states:

1. Except as authorized by sections 195.005 to 195.425, it is unlawful for any person to possess or have under his control a controlled substance.

Claerhout admitted that she possessed and used marijuana and methamphetamine. She reported to the counselors in her substance abuse treatment programs that she obtained these drugs from her former boyfriend, a drug dealer, and a family member who cooked methamphetamine. We infer that she possessed them without a prescription. There is cause to discipline her license under § 335.066.2(14).

IV. Rehabilitation

In determining whether a licensee has been rehabilitated, we consider a number of factors, including: the nature and seriousness of the original conduct, the nature of the crimes pled guilty to, the relationship of the offenses to the profession for which licensure is sought, the date of the conduct and guilty pleas, the conduct of the applicant since then and since any release

from imprisonment or probation, the applicant's reputation in the community, and any other evidence relating to the extent to which the applicant has repented and been rehabilitated. *State Bd. of Regis'n for the Healing Arts v. De Vore*, 517 S.W.2d 480, 484 (Mo. App., K.C.D. 1974). Case law also informs us that an applicant or licensee who wishes to prove rehabilitation must acknowledge his or her past crimes or misconduct and embrace a new moral code. *Francois v. State Bd. of Regis'n for the Healing Arts*, 880 S.W.2d 601, 603 (Mo. App., E.D. 1994).

In 2005 and 2008, Claerhout pled guilty to three crimes of moral turpitude that involved fraud or dishonesty. She violated her probation on many occasions. These are serious crimes. She was discharged from parole less than two years ago.

Claerhout has a long history of abusing alcohol and illegal drugs. This is dangerous conduct. She is currently in recovery, but reported as recently as December 2011, less than two years ago, that she still had episodes of drinking, and it is unclear whether her last illegal drug use was in 2010 or 2008. These dates are relatively recent.

“Practical nursing” is defined by § 335.016(14) as:

the performance for compensation of selected acts for the promotion of health and in the care of persons who are ill, injured, or experiencing alterations in normal health processes. Such performance requires substantial specialized skill, judgment and knowledge.

Nurses must use their skills, judgment and knowledge in carrying out their duties to care for patients. On occasion they may be called upon to act quickly and exercise independent judgment. It is important that their judgment not be impaired by drugs or alcohol.

All of these factors weigh against granting Claerhout an unrestricted license. But we also note that Claerhout never diverted drugs from her places of employment, never obtained prescription drugs illegally, and she primarily abused illegal drugs, not the type of drugs available in a hospital or nursing home. She participates in a twelve-step program and is

currently working on step 6, in which she makes amends. She is sincere and motivated in her desire to maintain sobriety. Her sobriety, although relatively recent, may have taken a firm hold.

We have, in the past, found applicants for licensure with criminal histories,³ or who used illegal drugs,⁴ to be rehabilitated. However, those cases have several commonalities. In all of them, the licensee had candidly acknowledged past crimes or conduct, and shown that he or she had embraced a new moral code. The licensees took responsibility for their actions and demonstrated absolute honesty in admitting their mistakes. The passage of time between the bad conduct and the license application is one, but not the only, factor considered. For example, in *Ampofo v. State Board of Pharmacy*, we stated:

[Ampofo] readily admitted and candidly described her conduct during her years of abusing cocaine. She also testified, without contradiction from the Board's investigator or other evidence, that she has been clean and sober since July 2, 2001, successfully completed a narcotics anonymous-type of rehabilitation program by 2002, and continued to participate in after-care visits. She has successfully supported herself and her seven-year-old daughter for at least the last three years Her supervisors' testimonials indicate a competent and responsible employee whom they see benefiting the company. Ampofo has taken the initiative to pursue an associate degree in business and has made good grades in her courses.

We find Ampofo and her evidence credible and neither weakened nor contradicted by anything else in the record. Ampofo has acknowledged the wrongfulness of her prior conduct and has successfully and persistently demonstrated through her conduct the internalized moral values of a person who is responsible to herself, her family, and society. Seven and a half years is long enough to show that Ampofo no longer needs a three-year period of intense supervision to make sure she is free of drugs. Ampofo has earned

³See *Redempta M. Kimanzi vs. State Bd. of Nursing*, No. 08-2028 BN (Aug. 5, 2009); *John Farrar vs. Missouri Real Estate Appraisers Commission*, No. 08-0912 RA (April 9, 2009); *Michael C. Cooper d/b/a Cooper's Landing vs. Supervisor of Liquor Control*, No. 04-0858 LC (Oct. 21, 2004); *Sharrisse Walls vs. State Bd. of Nursing*, No. 03-1933 BN (April 1, 2004); *John T. Ryan, D.C. vs. State Bd. of Chiropractic Examiners*, No. 99-0458 CX (Jan. 3, 2000).

⁴See *Vanessa Ampofo v. Missouri Board of Pharmacy*, No. 08-1202 PH (May 4, 2009); *James A. Brockenbrough v. State Bd. of Regis'n for the Healing Arts*, No. 08-0994 HA (May 4, 2009); *Christine Ann Trueblood v. State Bd. of Regis'n for the Healing Arts*, No. 09-0795 HA (Aug. 11, 2010). AHC cases may be found at <http://oa.mo.gov/ahc/>.

the opportunity to advance herself professionally and economically. She has an employer ready and eager to assist her professional advancement.

In *Walls v. State Board of Nursing*, the applicant's honesty was critical to our finding of rehabilitation:

However, in the four intervening years since the guilty plea, Walls has developed new skills for dealing with anger, received a professional education, and systematically removed bad influences from her family's life and her own. Moreover, in determining rehabilitation, we attach great weight to the applicant's honest answers on the application, particularly where the agency discovers past misconduct solely because of the applicant's candor when it would be easy to lie. Walls admitted that she had entered a guilty plea to third degree assault even though she knew that court records regarding the arrest are closed. We expressly note that without her forthright statements, the record would lack evidence that Walls ever pled guilty to anything. These factors tip our discretion in favor of Walls' position.

In *Ryan v. State Board of Chiropractic Examiners*, the applicant expressed deep regret for his crimes and truthfully disclosed them:

Further, Ryan fully cooperated with the prosecution and successfully completed the terms of his probation, including counseling. Since his release from confinement, Ryan has completed his education, worked extra hours in the college clinic, and earned an outstanding service award from the school. He has dissociated himself from his old friends and lifestyle. He is married, has a child, and has worked hard to complete school and provide for his family. He enjoys an excellent reputation in the community as one who is devoted to helping others. He has expressed deep regret for his crime and appears to have embraced a new moral code. Ryan's application to the Board truthfully disclosed his crime, and Ryan fully cooperated in providing information to the Board.

We conclude that Ryan has demonstrated that he has been rehabilitated and that he is a person of good moral character. Although he pled guilty to a crime that occurred in 1993, he completed his probation and schooling, and has demonstrated a commitment to providing quality chiropractic care. Ryan is entitled to licensure as a chiropractor.

We have included these lengthy excerpts not because they control our decision here; our decisions are not precedential. *Central Hardware Co. v. Director of Revenue*, 887 S.W.2d 593, 596 (Mo. banc 1994). However, they demonstrate that absolute honesty about past mistakes is critical to our consideration of whether a person has been sufficiently rehabilitated for unrestricted licensure.

In this case, we are convinced that Claerhout is sincere in her strong desire to maintain her sobriety. We believe that she is currently working hard toward that goal by attending AA meetings, counseling, and abstaining from drugs and alcohol. But her representations to the Board and to this Commission do not always square with one another, or with the treatment records that she herself provided to the Board. For example:

- Claerhout testified at the hearing, and represented to the Board, that she last used methamphetamine in May 2008.⁵ But two documents in her treatment records list her last usage date as occurring toward the end of 2010.⁶
- Claerhout denied at the hearing that she abused alcohol.⁷ But her treatment records contain many references to her alcohol dependency and abuse of alcohol as recently as 2011.⁸
- In a letter to the Board, Claerhout stated that she became addicted to prescription drugs after a traumatic event.⁹ At the hearing, she denied ever being addicted to prescription drugs.¹⁰

⁵ Tr. 20; Ex. A at 43.

⁶ Ex. A at 99 (stating the last date she used methamphetamine was December 1, 2010) and at 104 (referring to her celebrating one year of sobriety from chemical dependency on November 25, 2011).

⁷ Tr. 44.

⁸ See, e.g., Ex. A at 55 (2006); at 84 (2001); and at 99 (2011).

⁹ Ex. A at 23.

¹⁰ Tr. 34.

- In the same letter, and in her treatment records, Claerhout stated that she had a relationship with a known drug dealer.¹¹ At the hearing, Claerhout testified, “He owned a moving business. I wouldn’t say ‘drug dealer.’”¹²

At the hearing, Claerhout attempted to explain away some of these inconsistencies. She testified that the counselor who prepared the intake sheet that referenced her last date to use methamphetamine as December 10, 2010, must have confused her with her brother, who went in at the same time. She gave the same explanation for the report on the same intake form that she had drunk vodka to excess twice during the past thirty days. She stated that she did not actually become addicted to prescription drugs, but relied on them to help her sleep during that period of time.

Some of these explanations, particularly the last, are plausible. But the record contains clear references to a history of alcohol abuse that Claerhout clearly minimized. This is not the degree of honesty that convinces us that she is fully rehabilitated. She is on the right path, but she is not there yet.

V. Discretion

The purpose of our procedure is not to judge the Board’s conduct, but to remake its decision based on the record in front of us. As the court stated in *Missouri Real Estate*

Appraisers Comm’n v. Funk, 306 S.W.3d 101, 105 (Mo.App.W.D.,2010):

Though the issue of whether Funk demonstrated competence and knowledge in his commercial appraisals was the rationale for the denial of his general real estate appraiser's certification by the MREAC, the scope of the AHC's hearing was not restricted to this issue. **Instead, the AHC was entitled to conduct a fresh inquiry into whether Funk was deserving of certification, based upon**

¹¹ Ex. A at 24.

¹²Tr. 48.

the entire record of relevant admitted evidence pertaining to certification [emphasis added]. *Dep't of Soc. Servs., Div. of Med. Servs. v. Senior Citizens Nursing Home Dist. of Ray County*, 224 S.W.3d 1, 15 (Mo.App. W.D.2007) (“The commission actually steps into the department's shoes and becomes the department in remaking the department's decision. This includes the exercise of any discretion that the department would exercise.”). Thus, the inquiry of the AHC was whether, **at the time of the AHC hearing**, Funk met the requirements for general real estate appraisal certification as outlined in sections 339.511.3 and 339.535

(Emphasis added; footnotes omitted).

We follow the direction of the court of appeals and define our task as determining whether, at the time of the hearing, Claerhout met the requirements for an unrestricted license as an LPN.

Claerhout has led a difficult life. She has made considerable strides toward rehabilitation, but she has further to go. In order for her to perform her duties as an LPN safely, she must not only maintain her sobriety, but be honest about her past and current weaknesses with herself and others. We understand that the Board’s probationary terms make it difficult for her to find employment as an LPN, and that in turn makes it difficult to comply with the probationary term that she submit herself to random drug testing, because of its expense. Hers is a sympathetic situation.

But the primary purpose of professional licensing is to protect the public, *Lane v. State Comm. of Psychologists*, 954 S.W.2d 23, 25 (Mo. App., E.D. 1997), not to bestow a livelihood on licensees. We believe the Board exercised its discretion appropriately in this case by granting Claerhout a probated license subject to many safeguards. We see no reason to exercise our discretion differently.

Summary

We grant Claerhout a probated license, subject to the same terms and conditions as imposed by the Board.

SO ORDERED on July 26, 2013.

\s\ Karen A. Winn

KAREN A. WINN

Commissioner